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Human Rights Committee

Concluding observations on the third periodic report of Slovenia

Addendum

Information received from Slovenia on follow-up to the concluding observations*

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Responses of the Republic of Slovenia concerning the implementation of the recommendations of the United Nations Human Rights Committee referred to in paragraphs 8, 16, and 20 of the Concluding Observations of the Committee on the third periodic report according to the Covenant on Civil and Political Rights

1. The Committee called upon the State Party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the Committee's recommendations made in paragraphs 8 (racism and xenophobia, including hate speech), 16 (asylum-seekers, migrants and refugees) and 20 (vulnerable persons within the migration flow).

Racism and xenophobia, including hate speech (para. 8)

Para. 8 (a)

2. In 2016, the Republic of Slovenia created a partially new system to combat discrimination. Therefore, on 21 April 2016, the National Assembly of the Republic of Slovenia adopted the Protection Against Discrimination Act (Official Gazette of the Republic of Slovenia, No 33/16). The new Act governs, in an impartial, independent, and effective manner, the treatment of cases related to the prohibition of discrimination; furthermore, it establishes an independent state authority, the Advocate of the Principle of Equality. On 25 October 2016, the National Assembly of the Republic of Slovenia appointed the Advocate on the basis of a public procurement procedure. The Advocate is operational, and information about his activities is publicly accessible at <www.zagovornik.gov.si>.

3. The statements about minority groups mainly date back to an earlier period (2007 and 2008), and these cases have been investigated and proper procedures initiated, but there is no possibility of interfering with parliamentary immunity.

4. The Government also estimates that hate speech temporarily rose in the period from August 2015 to February 2016 (mass migrations from Turkey towards northern Europe across the territory of the Republic of Slovenia), but competent authorities and non-governmental organisations have already acted against it.

Para. 8 (a) and (c)

5. In 2016, the Government of the Republic of Slovenia drafted a Proposal for an Act Amending the Minor Offences Act (ZP-1J; EPA 1067-VII), Article 24 of which also contained a particular encroachment on the human right to privacy of communication (Article 37 of the Constitution of the Republic of Slovenia) in order to discover perpetrators of minor offences in the field of hate speech, which mainly referred to commenting on the internet (the issue regarding obtaining information on holders of IP addresses). This proposed stipulation was deleted at the session of the Justice Committee of the National Assembly of the Republic of Slovenia on 6 April 2016 by means of an amendment by members of Parliament (unanimously), as they felt that the provision excessively interfered with the right to privacy of communication and freedom of expression; there were even some allegations that censorship was being introduced. Therefore, we find that the legal responses related to the prosecution of hate speech have been tested, even in the field of more serious minor offences, and the limit has been discovered for a state governed by the rule of law regarding interference with the human right to privacy of communication (Article 37 of the Constitution of the Republic of Slovenia) or freedom of expression (paragraph 1 of Article 39 of the Constitution of the Republic of Slovenia) through its laws.

Para. 8 (d)

6. On the basis of the Media Act (ZMed), which also expressly prohibits hate speech, reducing hate speech has always been encouraged in the framework of annual public calls to apply for the co-funding of the programme content of the media. The "culture of public dialogue" was also among the goals and purposes of this call for applications, and the segment of the call for applications that is intended for what is known as programmes of special significance that are in the public interest of the Republic of Slovenia (local, regional, student, and non-profit radio and television programmes) also stipulates that "ensuring the observance of the principle of cultural diversity, the principle of gender equality, and the promotion tolerance" is considered as one of the criteria.

7. The Act Amending the Media Act (ZMed-C) was adopted in 2016, among other things, it stipulates that a publisher who allows public comments within a particular medium must devise rules for commenting and publish them in a suitable location within the medium. Any comment that is not in accordance with the published rules must be removed as soon as possible after it is reported or at the latest within one business day after it is reported. This solution is a method for (self-)regulating hate speech or offensive speech in online media and, as a result, for reducing their occurrence. It is connected to the issue of responsibility for published content referred to in paragraph three of Article 18 of the Media Act (ZMed), which stipulates that managing editors are responsible for any published piece of information (in a particular media outlet).

8. On the basis of the Radiotelevizija Slovenija Act (ZRTVS-1), RTV Slovenija as the national public broadcasting organization must, through its programmes, support the awareness raising of other cultures represented in Slovenia and their representatives, and it must promote a culture of public dialogue and provide a platform for public discussions on societal issues. The journalists of RTV Slovenia are obliged by law to observe the principles of constitutionality and legality, as well as professional and ethical norms, when developing programmes, including prohibiting cultural, religious, gender, racial, national, or any other form of intolerance.

9. Examples of the good practice of reducing all forms of hate speech or public incitement of hate and intolerance exist in the non-governmental sphere. Spletno Oko is a Slovenian reporting point where internet users can anonymously report videos of child sexual abuse or hate speech online. Spletno Oko reporting point is partner to the police, the State Prosecutor's Office, the Human Rights Ombudsman (without interfering with their independent powers), internet service providers, public and other interested governmental and non-governmental organisations, in the effort to remove from the internet to the maximum extent possible any videos of the sexual abuse of children and hate speech. It fulfils its mission and role by achieving the following goals:

- Operating a reporting point that enables the reporting of allegedly unlawful content related to the abuse of children and hate speech online;
- Raising the awareness of key stakeholders and the general public concerning the website itself and concerning any unlawful online content;
- Promptly and efficiently processing reports received (regularly and promptly reviewing reports and forwarding any reports of allegedly unlawful actions to the police and to other reporting points abroad);
- Monitoring the removal from Slovenian servers of reported videos showing the sexual abuse of children.

10. The Human Rights Ombudsman, the Faculty of Social Sciences (Spletno Oko) and the RTV Slovenija Multimedia Centre are partners within the project "Responding to Hate Speech – Launch of an Independent Connecting Body" coordinated by the Peace Institute. The implementation of the project "Responding to Hate Speech – Launch of an Independent Connecting Body" began in September 2014; the project is an attempt to respond to the prevalence and acceptance of hate speech in Slovenia and the absence of (formal) responses. The project focuses particularly on the establishment and operation of the Anti-Hate Speech Council and other connecting activities and activities related to raising awareness. It is based on the need for alternative mechanisms for responding to hate

speech and the urgent need for better coordination of already existing protagonists that actively oppose and respond to hate speech. At the same time, it addresses the need to empower and raise the awareness of vulnerable groups in Slovenia who are most exposed to hate speech.

Asylum-seekers, migrants and refugees (para. 16)

Para. 16 (a)

11. In the event of a changed situation in migration, the Republic of Slovenia could face a situation which could pose a threat to public order and internal security. According to the Resolution on National Security Strategy of the Republic of Slovenia, the pressure of migrant flows to the Republic of Slovenia may endanger the security and health of the nation's citizens, particularly in the event of a sudden and mass influx of migrants. Therefore, in order to ensure public order and internal security, the Republic of Slovenia had to anticipate certain measures to maintain its internal security and public order in the event of mass and uncontrolled arrivals of migrants and to enable the normal functioning of central state institutions and the provision of vital services. These measures are in accordance with the obligations of the Republic of Slovenia as a State Party; moreover, the competent authorities also regularly monitor migration conditions and assess any risks, on the basis of which reviews of the necessity and proportionality of the adopted measures are carried out.

Para. 16 (b)

12. The Ministry of the Interior, as the competent authority, processes all requests for international protection submitted in the Republic of Slovenia in accordance with the International Protection Act – ZMZ-1-UPB1 (Official Gazette of the Republic of Slovenia, No 16/17) and in accordance with applicable European Union directives and international conventions. If the conditions under ZMZ-1-UPB1 are met, one of the two forms of international protection is provided to applicants. In most cases, the reason for denying a request for international protection is the failure to meet the conditions, which is most frequently due to the lack of credibility of an applicant related to the information on the country of origin.

Para. 16 (c)

13. International protection procedures are demanding administrative procedures that are successfully managed only by public employees with suitable knowledge and experience, whereby a decision on each request for international protection is made on an individual basis by taking into consideration both subjective and objective elements. As per the ZMZ-1-UPB1, the requirements for granting international protection are decided on in a single application procedure, whereby the competent authority first examines the requirements for granting refugee status and only then, if these are not met, the requirements for granting subsidiary protection status.

14. Throughout the procedure, fundamental procedural guarantees are available to applicants (Article 4 of the ZMZ-1-UPB1). Prior to the commencement of the procedure, the person applying for international protection is given information about international protection procedures, the rights of applicants for international protection and their obligation to cooperate with the competent authority and the consequences of non-cooperation, and information on refugee counsellors and NGOs working in the field of asylum. One of the fundamental procedural guarantees is the right of applicants to follow the procedure in a language they understand. The assistance of an interpreter is provided to applicants upon the receipt of the application and personal interview. All written documents and substantive parts of the decision adopted by the authority in relation to their application are translated (Article 6 of the ZMZ-1-UPB1).

Para. 16 (d)

15. The fundamental safeguard of legal protection of applicants for international protection is free legal aid in judicial proceedings. The ZMZ-1-UPB1 determines that applicants for international protection have the right to legal counselling and representation throughout the procedure; free legal aid is anticipated in proceedings before administrative and supreme courts (Article 9).

Para. 16 (e)

16. The principle of non-refoulement in compliance with Article 33 of the Geneva Convention means that no State Party may in any way deport or forcibly return any refugee to territory where his/her life or liberty is threatened due to their racial, religious, national identity, or because he or she belongs to a specific social group or because of his or her specific political conviction. Therefore, the Act does not in any way entail a violation of the principle of non-refoulement as defined by the Geneva Convention, as Article 36 of the ZMZ-1-UPB1 also determines in great detail the prohibition of deportation from the Republic of Slovenia, namely until a request has been filed.

17. Furthermore, according to ZMZ-1-UPB1 (Article 54), a particular country may be declared a safe country only if, among other things, the condition of this country observing the principle of non-refoulement in accordance with the Geneva Convention is also met. A similar principle applies to the application of the concept of a country of first asylum, i.e. a country in which a seeker enjoys sufficient protection, including the principle of non-refoulement.

Para. 16 (f)

18. Family reunification for beneficiaries of international protection is treated in accordance with the Foreigners Act (ZTuj-2-UPB5). Article 47.a provides that the right to family reunification is to be granted to a person with recognised refugee status, whereby their family member is issued a permanent residence permit. Article 47.b stipulates that the right to family reunification is also to be granted to persons to whom subsidiary protection is provided for more than one year, but the right to family reunification is only granted to persons to whom subsidiary protection is provided for one year after their subsidiary protection has been extended. A temporary residence permit is issued to family members of persons with subsidiary protection.

19. Persons with recognised international protection (both persons with refugee status and persons with recognised subsidiary protection) must file their request with the Ministry of the Interior within 90 days after their international protection status is recognised. A person with recognised international protection has to enclose documents with the application for a permanent residence permit that prove the family relationship and the identity of their family members. If a person with recognised international protection does not possess documents to prove the family relationship, they have to provide all the facts about family members with whom they wish to be reunited, especially the names of family members, dates and places of birth, the residence address in the country of origin, and information about the family members' whereabouts at the time when the application was submitted. In such a case, they also have to enclose written consent which allows the competent authority to divulge information about their family members to international organisations working in the field of migration for the purpose of validating family relationships.

20. With its available human resources, the Ministry of the Interior endeavours to carry out procedures in the shortest time possible or within the statutory deadlines. If the people reunifying their family also wish to facilitate and, as a result, expedite the procedure, they should strictly observe deadlines and their duties, and they should provide officials with documentary evidence showing a family relationship and the authenticity of their family members, and their request should state in great detail all important facts that will facilitate and expedite the entire procedure.

Vulnerable persons within the migration flow (para. 20)

21. Section 2 of Chapter 2 of the ZMZ-1-UPB1 specifically addresses the treatment of vulnerable persons with special needs, particularly minors, unaccompanied minors, disabled persons, elderly persons, pregnant women, single parents with a minor child, victims of human trafficking, persons with mental development issues, persons with mental health problems, and victims of rape, torture or other severe forms of psychological, physical, and sexual abuse. The identification of vulnerable persons is determined in Article 13, which stipulates that whether the person in question is an asylum-seeker with special needs is to be assessed within the review referred to in Article 42.[1] Special needs can also be determined at any point later in the international protection procedure. The material conditions of acceptance, their health and psychological counselling and care are adjusted for asylum-seekers with special needs; those asylum-seekers who require special guarantees in the procedure are provided with suitable support, so that they may enjoy the rights and fulfil their obligations related to the international protection procedure.

22. Additionally, at its 98th regular session on 28 July 2016, the Government of the Republic of Slovenia adopted Decision No 21400-6/2016/8 by way of which it decided that unaccompanied minors residing in Slovenia illegally and having the status of an applicant for international protection or a person with international protection be provided with suitable accommodation in public dormitories for pupils, namely at the Postojna Dormitory and the Nova Gorica Dormitory, in the period from 1 August 2016 to 31 July 2017. The purpose of the project was to provide unaccompanied minors suitable accommodation, including 24-hour care, which they require due to their vulnerability. Furthermore, this allowed them to be treated by experts throughout the day and to be accommodated separately and safely, which means that the principle of the best interests of the child is also observed. Because the pilot project has been hugely successful, it has continued as a permanent project at the Postojna Dormitory.

23. The project 'Introducing a mechanism for identification of, assistance to and protection of victims of trafficking in human beings and/or sexual abuse in the procedures of recognition of international protection in Slovenia (PATS)' has also been established; it is intended for asylum-seekers who are potential victims. It provides awareness, identification, assistance, and protection in a language that the target population understands. The general goal of the project is to facilitate the identification of vulnerable groups requiring special treatment. The special goals of the project include recognising and informing potential victims of human trafficking, sexual abuse, or gender-based abuse, and their suitable treatment. The purpose of the programme is to raise the awareness of people who, in most cases, do not recognise the dangers and results of human trafficking, and to use a suitable approach to encourage them to actively participate in preventing various forms of exploitation. In addition to providing information, the programme operator must also ensure that additional activities to improve the entire programme be carried out.

Additionally: With regard to the establishment a system for the operation of the Human Rights Ombudsman in accordance with the Paris Principles of 1993 (what is known as Status A)

24. Slovenia wishes to additionally emphasise that, at the legislative level, it has already fulfilled its commitment to establish a national institution for human rights in Slovenia with status A according to the Paris Principles.

25. On 14 October 2017, the Act Amending the Human Rights Ombudsman Act (Official Gazette of the Republic of Slovenia, No 54/2017), adopted on 20 September 2017, entered into force. The main purpose of amending the Act was to expand the competencies of the institution of the Human Rights Ombudsman based on suitable legal grounds in a manner that would allow the Ombudsman to carry out all international principles and, as a

[1] Article 42 regulates a preliminary procedure, and the identification of vulnerable persons is carried out within the scope of a sanitary and disinfection examination and a preventive medical examination.

result, to acquire Status A according to the Paris Principles relating to the Status of National Institutions for Human Rights of 1993.

26. According to the Amending Act, the mandate of the Human Rights Ombudsman will be broad and general, and the perspective of the pluralism of the institution's operations has been additionally enhanced. On the basis of the Act, a Human Rights Ombudsman Council will be established – an advisory body of the Ombudsman that will allow pluralism of membership and enhance cooperation with the civil society and experts. The Act provides the Ombudsman with, for example, mandate to provide opinions on development policies regarding human rights and fundamental freedoms. The Council will have seven members from civil society and three members from the scientific field, which will enable various fields related to human rights to be represented, including vulnerable groups and various spheres of civil society. The members of the Council will be appointed independently by the Ombudsman on the basis of a public procurement process, with the exception of two representatives of the civil society and one representative of the scientific field, who may also be appointed directly. Furthermore, representatives from various national institutions can also be Council members, including representatives from different branches of government; however, members may not be high officials (such as members of Parliament, ministers, etc.).

27. On the basis of the Act, the Human Rights Ombudsman will also establish a Human Rights Centre. The Centre will operate as a permanent internal organisational unit of the Human Rights Ombudsman, and will work in accordance with the principle of expert autonomy. According to the Act, the Centre has broad competencies, including promotion, disseminating information, education, training, drafting analyses and reports from individual fields within the protection of human rights and fundamental freedoms, organising panel discussions regarding the implementation and protection of human rights and fundamental freedoms, cooperating with civil society, providing general information on the types and forms of complaints to international authorities due to violations of human rights and fundamental freedoms, international cooperation at the European and international level in international organisations and associations working in the field of encouraging, implementing, and developing human rights and fundamental freedoms.

28. According to the Act, the provisions regarding the Council become applicable on 1 June 2018, and the provisions regarding the Centre on 1 January 2019. This means that the Ombudsman must establish the Council and the Centre by the specified dates. The Government has already fulfilled its obligations related to the establishment of a system for the operation of the Council and the Centre – it provided in advance (even before the adoption of the Act – on 20 September 2017) the funds required for the work of both of the specified organisational structures of the Ombudsman's work – for both 2018 and 2019.